

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

1. GARY SMITH,)	
2. DELORIS SMITH,)	
)	
Plaintiffs,)	
)	
v.)	Case No.
)	
1. ACA INSURANCE COMPANY)	
D/B/A AAA FIRE & CASUALTY)	
INSURANCE COMPANY, A Foreign)	
For Profit Insurance Corporation,)	
)	
Defendant.)	

COMPLAINT

A. Parties

1. Plaintiffs, Gary Smith and Deloris Smith are each citizens of the State of Oklahoma.

2. Defendant, ACA Insurance Company d/b/a AAA Fire & Casualty Insurance Company, is a foreign for profit insurance corporation incorporated and organized under the laws of the state of Indiana.

3. The principal place of business for Defendant, ACA Insurance Company d/b/a AAA Fire & Casualty Insurance Company, is within the state of California.

4. The Defendant, ACA Insurance Company d/b/a AAA Fire & Casualty Insurance Company, is licensed to conduct business in the state of

Oklahoma and may be served with process through the Oklahoma Department of Insurance.

5. This action is not related to any other case filed in this court.

B. Jurisdiction

6. The court has jurisdiction over this matter pursuant to 28 U.S.C. §1332 because there is diversity between the parties and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

C. Facts

7. At all times material hereto the Plaintiffs, Gary Smith and Deloris Smith, owned a home located at 3311 S. Shields Boulevard in Oklahoma City, Oklahoma.

8. On or about May 31, 2013, Plaintiffs' home and personal property were damaged as the result of a tornado and affiliated wind and rain.

9. At all times material hereto, the Plaintiffs, Gary Smith and Deloris Smith, were insured under the terms and conditions of a homeowner insurance policy, policy number H03-002930281, issued by the Defendant, ACA Insurance Company d/b/a AAA Fire & Casualty Insurance Company.

10. At all times material hereto, Plaintiffs, Gary Smith and Deloris Smith, complied with the terms and conditions of their insurance policy.

11. Tornado, wind and hail damage are covered perils not otherwise

excluded pursuant to the terms and conditions of the policy issued by the Defendant.

D. Count I Breach of Contract

12. Plaintiffs, Gary Smith and Deloris Smith, hereby assert, allege and incorporate paragraphs 1-11 herein.

13. The property insurance policy No. H03-002930281, issued by the Defendant, ACA Insurance Company d/b/a AAA Fire & Casualty Insurance Company was in effect on May 31, 2013. Said policy contained coverage for contents/personal property damaged as a result of a covered peril.

14. On or about May 31, 2013, Plaintiffs, Gary Smith and Deloris Smith, sustained tornado and affiliated wind, hail and water damage to their home located at 3311 S. Shields Boulevard in Oklahoma City, Oklahoma.

15. The acts and omissions of the Defendant, ACA Insurance Company d/b/a AAA Fire & Casualty Insurance Company, in the investigation, evaluation and payment of Plaintiffs' claim were unreasonable and constitute a breach of contract for which contractual damages are hereby sought.

16. Defendant's breach of contract includes, but is not limited to, the failure to pay for water damages to Plaintiffs' personal property. Defendant was also acting unreasonably and in breach of contract by refusing to pay the cost of having Plaintiffs' personal property inspected to determine whether the property was repairable or a total loss. This property was inspected at the request of Defendant

ACA Insurance Company d/b/a AAA Fire & Casualty Insurance Company. Both the cost of the inspection and the personal property are covered under the terms and conditions of Plaintiffs' insurance policy issued by the Defendant. After the inspection, it was determined that the personal property was not repairable. Plaintiffs submitted the cost of the inspection and an inventory sheet itemizing the replacement cost of the water damaged personal property. Defendant acted unreasonably and in clear breach of its contract by refusing to pay for both the inspection and the cost to replace the water damaged personal property.

E. Count II Bad Faith

17. Plaintiffs, Gary Smith and Deloris Smith, hereby assert, allege and incorporate paragraphs 1-16 herein.

19. The above mentioned acts and omissions of the Defendant, ACA Insurance Company d/b/a AAA Fire & Casualty Insurance Company, in the investigation, evaluation, and payment of Plaintiffs' claim were unreasonable and constitute bad faith for which bad faith and extra-contractual damages are hereby sought.

20. AAA Fire & Casualty Insurance Company's unreasonable and bad faith conduct included refusal to pay for Plaintiffs' personal property that was damaged by water. Said water entered Plaintiffs' home as a result of wind damaging Plaintiffs' window dormer. The high winds blew up composition shingles on

Plaintiffs' roof, creating an opening which allowed wind driven rain to enter into Plaintiffs' home through these storm created openings. AAA Fire & Casualty Insurance Company recommended and paid for a company to perform emergency repairs to Plaintiffs' home to stop additional intrusion of water. The emergency repairs included re-caulking the dormer flashing and re-sealing the composition shingles that were unsealed and lifted by the wind. AAA Fire & Casualty Insurance Company unreasonably and in bad faith refused to pay for the water damaged personal property that was destroyed by the water intruding from the openings in the roof and dormer created as a result of the covered tornado, wind and hail storm. Defendant unreasonably claimed that the personal property was not covered because there was no water that entered through an opening in the roof caused by a covered peril. This position and denial of coverage is unreasonable in and in bad faith because the Defendant paid to repair the storm created openings in the dormer flashing and unsealed composition shingles.

21. The Defendant was further unreasonable and acted in bad faith by treating Plaintiffs with hostility by telling the Plaintiffs that AAA Fire & Casualty Insurance Company was not paying them another dime and that Plaintiffs should be "grateful" for what AAA Fire & Casualty Insurance Company had already paid them.

F. Count III Punitive Damages

22. The unreasonable conduct of the Defendant, ACA Insurance Company d/b/a AAA Fire & Casualty Insurance Company, in the handling of Plaintiffs' claim was intentional, willful, wanton and was committed with a reckless disregard for the rights of the Plaintiffs for which punitive damages are hereby being sought.

G. Demand for Jury Trial

23. The Plaintiffs, Gary Smith and Deloris Smith, hereby request that the matters set forth herein be determined by a jury of their peers.

H. Prayer

24. Having properly plead, Plaintiffs, Gary Smith and Deloris Smith, hereby seek contractual, bad faith and punitive damages against the Defendant, ACA Insurance Company d/b/a AAA Fire & Casualty Insurance Company, all in an amount in excess of \$75,000.00; including costs, interest and attorney fees.

Respectfully submitted,

S/ Michael D. McGrew

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